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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,422	04/12/2004	Vincent Lin	025646-0110	2559
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FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			EXAMINER EARLY, MICHAEL JACOBY	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/822,422

Applicant(s)

LIN, VINCENT

Examiner

Michael J. Early

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-14 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 9 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

#### **Priority**

All the content submitted with this application has been reviewed and it has been determined that neither domestic nor foreign priority has been claimed.

#### **Information Disclosure Statement**

The examiner has reviewed all the content of this application and acknowledges that no Information Disclosure Statement has been submitted.

#### **Oath/Declaration**

The Oath/Declaration for this application meets all of the requirements set forth and has been approved.

#### **Drawings**

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 39 (as seen in Figure 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

**Specification**

The disclosure is objected to because of the following informalities:

- On page 4, paragraph 0019, the specification states: "A clear sleeve 38 that has an open ended tubular shape is slid over an outer surface 38 of jar 12. The element number "38" has been used to designate both the clear sleeve as well as the outer surface. It is suggested that the applicant review the specification and enclosed drawings and then make the appropriate corrections.

Appropriate correction is required.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Freeman et al. (U.S. 6,491,517 B2).

Freeman et al. disclose of a decorative candle display and a method of its formation, which comprises a jar (16 – container) having an interior surface; a candle (24) located within the jar and at least two decorative elements (20 – opaque structure) being located adjacent the interior surface and positioned in a pattern (as seen in Figures 6 – 8).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Riches (U.S. 2002/0150854 A1).

As stated earlier, Freeman et al. disclose of a decorative candle display with possible exception to:

- the candle including an opening and a first portion having a first cross sectional area that is greater than a second cross-sectional area of a second portion, the second portion being located between the first portion and the opening;
- the decorative elements include a first face being proximate the inner surface of the jar, the decorative element further includes a second face opposite the first face and an outer periphery extending between the first face and opposing second face, the outer periphery and second face of the decorative element being embedded within the candle;
- the decorative elements are secured to the inner surface of the jar with an adhesive;
- the adhesive is a wax material.

Attention is directed to the secondary reference, Riches, who teaches of a scented candle that has the appearance of a fruit preserve jar and a method of making it (see page 1, paragraph 0003). In addition, it is further disclosed that the candle (10) is comprised of: a container (12), top cover (12A), fruit layer (14) and wick assembly

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(22); and also provides a nice aroma when it or is not being burnt (see page 1, paragraph 0009). Through visual inspection, it can further be seen that the candle's container (12) comprises of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening (as seen in Figures 1, 2 and 5).

Freeman et al. (U.S. 6,491,517 B2) further disclose that the opaque structures (20), which are fabricated out of an opaque combustible wax and a transparent combustible gelatinous material, are positioned against the substantially flat interior wall surface of the container (16) (as seen in Figure 7). It is further disclosed that the material that the structures (20) are made out of a tacky substance, which temporarily allows them to self adhere, in patterns (as seen in Figures 6 – 8), to the container's surface (16) (see col. 3, lines 60 – 67; col. 4, line 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle of Freeman et al. (U.S. 6,491,517 B2) so that it would be enclosed within a container that comprises of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening, as taught by Riches, in order to provide a candle assembly: whose cover can be placed in an open or closed position and is capable of storing a larger volume of wax than what is portrayed by its opening.

Claims 6 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Riches and in further view of Freeman et al. (U.S. 6,241,512 B1).

As stated earlier, Freeman et al. disclose of a decorative candle display with possible exception to:

- the candle includes a first wax material adjacent the inner surface of the jar and the decorative elements;
- the first wax material extends a pre-determined distance inward into an interior of the jar to form a first wax layer., the pre-determined distance;

- the candle includes a second wax layer having a material different than the first wax layer and being located in an interior region defined by the first wax layer.

Attention is directed to the secondary reference, Freeman et al. (U.S. 6,241,512 B1), which teach of a decorative candle display that is uniquely shaped, contains gelatinous structures within and has been constructed so that it can accept a replacement core candle once the original core candle has been burned (see col. 1, lines 17 – 22). Freeman et al. (U.S. 6,241,512 B1) also state that the candle display (10) is comprised of: a transparent container (12), which can be made out of glass or other appropriate material; a core candle (14), which is preferably made out of a conventional paraffin wax and is disposed within the container (12); a chamber (18), which is formed between the core candle (14) and the interior wall surface (20) of the container (12); a plurality of colored gelatinous structures (22), which are adhered to the display's interior wall surface (20); and a petroleum and paraffin mixture (24), which has a melting point below that of the core candle (14) and gelatinous structures (22) (see col. 3, lines 33 – 45, lines 61 - 67). It is further disclosed that the mixture (24) surrounds each of the gelatinous structures (22) and is located in between the exterior surface (15) of the candle core and interior wall surface (20) of the container (12) (see col. 4, lines 2 – 6; Figures 2 – 5). In addition, the gelatinous structures (22), which are manufactured from a mineral oil gel, can be seen to cover a portion of the candle's mixture (24) (see col. 3, lines 46 – 51; Figure 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. (U.S. 6,491,517 B2) in view of Riches by creating a wax layer that surrounds a core candle; however, is enclosed within the display's container, as taught by Freeman et al. (U.S. 6,241,512 B1), to provide a candle display that can accept a replacement core candle upon the depletion of an original core candle.

Claims 10 – 11, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli (1999).

As stated earlier, Freeman et al. (U.S. 6,491,517 B2) disclose of a decorative candle display with possible exception to a method comprising of:

- a jar having an interior surface defining an interior region; sliding a sleeve over the jar, the sleeve having a predetermined pattern; aligning the sleeve and jar; applying a decorative element to the interior surface of the jar, the decorative element being in alignment with the pattern on the sleeve; and covering the decorative element with wax;
- aligning the sleeve and jar includes placing a bottom of the sleeve and a bottom of the jar in alignment;
- the pre-determined pattern on the sleeve includes an outline that matches an outer periphery of the decorative element;
- applying a decorative element includes applying at least two decorative elements in alignment with the pattern on the sleeve.

Attention is directed to the secondary reference, Romanelli (1999), which teaches of the preparation of wax , materials and equipment related to and the making of candles (see pages 4 – 5). Romanelli also discusses that candles can be of different shapes, made out of various molds and decorated in an assortment of manners. It is further disclosed that a candle can be decorated through the use of stencil motifs (see pages 120 – 121), which as seen visually allows a user to align a pre-designed pattern of some sort along the candle's exterior surface and inscribe, via spray paint, a selected pattern.

As previously stated, Freeman et al. (U.S. 6,491,517 B2) disclose that the decorative elements can be aligned in patterns along the jar's (12 – container) interior surface (16 – interior wall surface of the container).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. (U.S. 6,491,517 B2) by placing a stencil motif along the container's outer surface, as taught by Romanelli, for the purpose of allowing the decorative elements, which are



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placed along the container's interior surface, to be aligned with the patterns found on a stencil motif.

Claims 12 – 14, 16 and 19 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli and in further view of Freeman et al. (U.S. 6,241,512 B1)

As stated earlier, Freeman et al. (U.S. 6,491,517 B2) disclose of a decorative candle display with possible exception to a method comprising of:

- filling the jar with wax includes applying a first layer of wax adjacent the decorative elements and the interior surface of the jar and applying a second layer of wax within a cavity formed by the first layer of wax;
- applying a second layer of wax includes inserting a preformed candle having a second wax material and a wick within the cavity formed by the first layer of wax;
- the first layer of wax is a darker shade than the second layer of wax;
- forming a plurality of decorative elements from wax;
- the decorative elements are formed from wax and bleed into the first layer of wax.

Attention is directed to the secondary reference, Freeman et al. (U.S. 6,241,512 B1), which teach, as stated earlier, of a decorative candle display that is uniquely shaped, contains gelatinous structures within and has been constructed so that it can accept a replacement core candle once the original core candle has been burned (see col. 1, lines 17 – 22). In addition, as stated earlier, Freeman et al. (U.S. 6,241,512 B1) disclose of a candle display (10) that is comprised of: a transparent container (12), a core candle (14), a chamber (18), a plurality of colored gelatinous structures (22) and a petroleum and paraffin mixture (24) (see col. 3, lines 33 – 45, lines 61 - 67). It is further disclosed that the mixture (24) surrounds each of the gelatinous structures (22) and is located in between the exterior surface (15) of the candle core and interior wall surface (20) of the container (12) (see col. 4, lines 2 – 6; Figures 2 – 5).

In addition, as previously stated, Freeman et al. (U.S. 6,491,517 B2) disclose that the decorative elements (20 – opaque structures) are made out of an opaque combustible wax and transparent combustible gelatinous material, which intuitively will melt upon reaching its respective melting point.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli by creating a wax layer that surrounds a core candle; however, is enclosed within the display's container and adjacent to a plurality of decorative wax elements, as taught by Freeman et al. (U.S. 6,241,512 B1), to provide a candle display that can accept a replacement core candle upon the depletion of an original core candle.

In regard to claims 14 and 19, they are unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli and in further view of Freeman et al. (U.S. 6,241,512 B1) as a result of design considerations.

Neither Freeman et al. (U.S. 6,491,517 B2), Romanelli nor Freeman et al. (U.S. 6,241,512 B1) discuss the relationship between the shades or colors of a candle's inner core and its surrounding. In the present application, as previously stated, the applicant points out that the first layer of wax is a lighter shade than the second layer of wax; however, has not disclosed that having shaded layers of wax in this manner solves any stated problem or is for any particular purpose. Moreover, it appears that the candle would perform equally well with both layers of wax being of the same shade or the second layer being of a lighter shade.

Therefore, it would have been obvious to provide a candle display that comprised of a first layer of wax that is of a lighter shade of wax than a second layer to ensure that the second wax layer is seen through the first wax.

Accordingly, the use of a candle display as disclosed above is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Freeman et al. (U.S. 6,491,517 B2) and Romanelli.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli and in further view of Riches.

As stated earlier, Freeman et al. (U.S. 6,491,517 B2) disclose of a decorative candle display with possible exception to a method comprising of providing a jar with an opening and a first portion having a first cross-sectional area that is greater than a second cross-sectional area of a second portion, the second portion being located between the first portion and the opening.

Attention is directed to the secondary reference, Riches, which teaches, as stated earlier, of a scented candle that has the appearance of a fruit preserve jar and a method of making it (see page 1, paragraph 0003). In addition, it is further disclosed that the candle (10) is comprised of: a container (12), top cover (12A), fruit layer (14) and wick assembly (22). Through visual inspection, it can be seen that the candle's container (12) comprises of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion, and a second portion that is located between the first portion and the opening (as seen in Figures 1, 2 and 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing candle display of Freeman et al. (U.S. 6,491,517 B2) in view of Romanelli so that it would be enclosed within a container that comprises of an opening; a first portion, whose cross-sectional is greater than the cross-sectional area of a second portion; and a second portion that is located between the first portion and the opening, as taught by Riches, in order to provide a candle assembly whose cover can be placed in an open or closed position and is capable of storing a larger volume of wax than what is portrayed by its opening.

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**Allowable Subject Matter**

Claims 9 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJE  
9/23/05

Michael J. Early  
Patent Examiner  
Art Unit: 3749



  
MONICA S. CARTER  
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